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Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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INDIA: Reinforcing subordination of women in law and practice

1. To formally recognize the existence of discrimination against women in India, both in law and in practice, the country has acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1993, undertaking obligation to eliminate "any distinction, exclusion or restriction" made on the basis of sex which impairs or nullifies "the recognition, enjoyment or exercise" women's "human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." This duty, however, is still waiting due recognition and implementation by the state.

2. In India, discrimination against women in law and practice is multi-layered and complex, owing to country's social, political, economic, and cultural fibers. Discrimination against women in India arises from multiple, intertwined, and pervasive sources, deeply influenced by the negative elements of caste, gender, marital status, customs and traditions, sexual orientation, economic empowerment, level of education, decision making power, poverty, prejudiced attitudes, and negative stereotyping in private and public spaces among others. Indian laws, as well as law makers, have yet to seriously recognize these aspects in the criminal justice system to ensure equality and non-discrimination regarding women.

3. Despite adopting constitutional guarantee of non-discrimination against women and affirmative action-like policy of reservations in certain sectors, discrimination against women in India remains both direct and indirect. Women are directly discriminated against for certain employment on the pretext of their supposed inferiority and negative stereotyping, especially regarding promotion to managerial posts. Due to these stereotypes, women are also not considered for employment in security sectors like the armed forces. Laws dealing with marriage and inheritance are discriminatory as codifications of personal and customary laws for many communities have yet to be initiated. Indirect discrimination causes females to be the first ones to be discarded from list of beneficiary of public schemes for obvious reasons like lack of capital, land, adequate training, education, and other assets.

4. Social conditioning encourages discrimination against women that begins at home. This is due to the fundamental basis of the social and cultural order of Indian family, an institution that women are born into. Families are based on male hierarchy, a fundamental contradiction to the notion of equality and non-discrimination. Indian families protect male dominance to enforce power and control over autonomy of the female members. In this way, women's subordination is reinforced by the tentacles of patriarchy manifested in discrimination at multiple levels through out women's life cycle. This omnipresent cycle of discrimination against women is often described as discrimination "from the womb to the tomb". Such social conditioning to discriminate against women is reflected in the law as well. For example, marriageable age determined by law still discriminates against women; it is fixed by the state as 18 years while that of a man is 21 years. Early marriage compared to men acts as a barrier for women in education, livelihood, and employment compelling them to be economically dependent on their male counterparts, who are favoured by the law to continue focusing on professional and personal development.

5. One of the prime manifestations of discrimination is violence against women in family, community, and the labour market, that indoctrinates subordination to women, compromising self-esteem and leading to a life without dignity. Discriminatory cultural practices, such as dowry, honour killings, witch hunting, etc. are widely prevalent in India. Women's subordinated status in the society, reinforces the promotion of male child preference. Consequently, female infanticide and female feticide, with the help of modern scientific medical technologies, has degraded the population sex ratio in the country while legal texts prohibiting such practices remain merely symbolic. Traditional practices in the name of religion can be equally blamed for negative cultural practices against women.

6. Security of person and property for women, however, supersedes all forms of violence. Gender based violence, rampant all over India, circumscribes women's access to livelihood opportunities and personal development while restricting their mobility. Despite several amendments in criminal laws favouring women, law enforcement remains inaccessible to women due to the high level of insensitivity and lack of professionalism in country's criminal justice mechanism. It is an established fact that women prefer silence over approaching law enforcement institution, such as the police, especially if the violence is sexual in nature. Women are also discouraged from seeking justice for sexual violence as they are perceived as symbols of "honour" for the family and community.

7. Women face discrimination in armed conflict situation as well. In India, armed conflict is ongoing in about 21 states and women there are affected disproportionately due to violence perpetrated by both state and non-state actors. Armed conflicts radicalize, utilize and encourage patriarchal dicta unilaterally imposed on women. In addition, sexualized violence committed by the armed actors is often used as a "weapon of war" that leaves women stigmatized for the rest of their life. In India, special legislative measures like Armed Forces (Special Powers) Act, 1958 and its equivalents permitting arbitrary detention are applicable in armed conflict areas of north east India, Chhattisgarh, Jammu, and Kashmir. Such legislations allows extrajudicial executions and involuntary disappearances with impunity and leaves women as widows and forced to live a life full of uncertainties, as documented by Asian Human Rights Commission, the sister organisation of the Asian Legal Resource Centre. The culture of impunity for sexual violence is endemic and is also a regular feature witnessed in armed conflict areas of India.

8. Much of the consistent and deep rooted pattern of discrimination against women in India can be attributed to the "sameness" (women are considered equal to men in terms of rights and duties) and "protectionist" (women are excluded for their own security from rights and duties) approach of addressing inequality by the policy makers in framing laws and consequently in practice. This approach, to date, has posed a significant barrier to women's equal participation in the decision making bodies, like the parliament of India: the most important law making institution in the country having profound potential for eliminating discrimination against women. However, women's entry to this institution remains poor in spite of a few exceptional leaders. To reverse this discrimination, an affirmative action-like reservation of 33 percent of the seats for women in the entire legislatures was initiated. However, such a pro-women proposal passed in upper house of the parliament lacks political will and is still catching dust in the lower house of the parliament with a *sine qua non* status. In last general election (2009), representation of women in leadership and decision making positions for the country was confined to only 11.4 percent of parliamentarians, the lowest in South Asia, despite the fact that almost 50 percent of the electors in the country are female. The status didn't change much in the recently concluded general election of 2014. It was observed that major political parties discriminated against women in nominating them as candidates. Major political parties like the Indian National Congress nominated 56 women and that of Bharatiya Janata Party nominated only 35 candidates. A total of 636 women out of 8,163 candidates contested and 191 of them contested independently. The statistics of representation remains marginalized with only 61 women parliamentarians out of a total of 543 seats in the lower house of the parliament. In local governance, though the 73rd and 74th amendment to the Constitution of India confirmed 33 percent of seats are reserved for women, areas marked under sixth schedule and other special status areas under the constitution are left out of this scheme. Systematic exclusion from decision making body through their marginalized demography in parliament over a period of time has adverse effects on her entitlements and rights spanning a spectrum of political, public, economic, and social subjects. A change in political landscape affirming equal participation of women is required to further pursue non-discrimination.

9. The absence of equality in the political field perpetuates harmful discrimination. Constitutional and legal measures or policies adopted in parliament even being labeled as good practices to protect, respect, and promote women's rights on par with men, suffers from inherent inadequacies and lacks any proper implementation apparatus. In addition, insensitive and inefficient institutions further prohibit women from accessing justice in case of a violation or to enforce her rights.

10. Inadequate resource allocations for implementation of laws and policies promoting women's equality remain a challenge. The Prohibition of Domestic Violence Act 2005 is an example. Gender budgeting, though adopted in 1990s for mainstreaming gender in state apparatus, is yet to be proved as a strategy rather than a mere catchphrase.

11. Nearly half of India's population is women. In order to achieve equitable social, political, and economic justice, elimination of discrimination against women in law and in practice should be treated as a prime duty of the state. To achieve this, the Convention on Elimination of All form of Discrimination Against Women (CEDAW) advocates for adoption of a "substantive model" (equality of women in result, not in process) of equality as a strategy that recognizes women's unequal status in the society and stresses the importance of equality of opportunity and equality of results at par with men.

12. Being a state party to CEDAW, and given that the review of Government of India's report by CEDAW Committee is forthcoming, Indian policy makers must ensure its commitments and obligation to adopt both in law and in practice, the "substantive model of equality" as well as "procedural equality" in criminal justice system as a matter of priority that prescribes equality in results and in process.